

10217



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : LON/00AP/LSC/2014/0080

**Property** : 75A and B Kitchener Road, London  
N17 6DJ

**Applicants** : Mr Dilip Parmar (Flat A)  
Ms Dilsev Nazim & Lutfiye Nazim  
Mahmud Nazim (Flat B)

**Representative** : Mr D Parmar & Ms Dilev Nazim

**Respondent** : Seamoat Limited

**Representative** : BLR Management Ltd – Mr J  
Galliers (Managing Agent)

**Types of Application** : Liability to pay service charges &  
administration charges

**Tribunal Members** : Judge Tagliavini  
Mr H Geddes

**Date and venue of  
Hearing** : 9 June 2014  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 22 July 2014

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**DECISION**

## **Decisions of the tribunal**

1. The Tribunal finds that all of the service charges disputed by the Applicants are reasonable and payable.
2. The Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985 as there is no provision in the lease that allows the landlord to add the legal costs of this application to the service charge.

## **The premises**

3. The premises comprise two flats in a converted terraced house. By a lease dated 8 November 1985, the Respondent is responsible for the provision of services in each year running from the 1<sup>st</sup> day of January in each calendar year with interim charges due at six monthly intervals and a provision made for the collection of a reserve fund. Service charges are payable in advance and have been billed in 2006 as such. The services provided by the landlord include the provision of buildings insurance, repair and maintenance of the main structure, and gas, water and electrical services and maintenance of the common paths, passageways and driveways and exterior decoration.

## **Preliminary matters**

4. The applicants disputed the reasonableness of and their liability to pay service charges for the years 2006 – 2014 for the following heads of service charge:
  - Sinking fund
  - Balancing service charges
  - Maintenance costs
  - Costs incurred for surveys
  - Managing agent's fees
  - The costs incurred in the recovery of service charges
5. However, it was established at the hearing that a judgment in the sum of £2,031.41 had been obtained against the tenants of Flat B covering service charges for 2009 and 2010 in addition to the balancing charge for 2008. and a Statement of Admission dated 13/06/2011 was made by these tenants of their acceptance of their liability to pay the said charges and is confirmation that they do not seek to dispute them. Consequently, the Tribunal was unable to revisit these service charge years in respect of the tenants of Flat B.

## **The hearing and evidence**

6. The Tribunal was provided with a lever arch file of documents for the hearing together with some additional documentation provided by the Respondent at the hearing itself. The Tribunal heard oral evidence from the applicant's representatives and from Mr Galliers for the Respondent.
7. The Applicants contended that the insurance was too high and could be obtained more cheaply elsewhere. The management fees were said to be excessive as these equated to £150 per flat per annum. The Applicants challenged the manner in which the asbestos survey had been obtained in 2008 and the lack of maintenance works and queried whether the charge for the painting of an external gate could have been incurred as it was said there never had been such a gate in situ. Similarly, the Applicants queried the provision of fire extinguishers at the premises and asserted they have not been installed at the premises although they have been charged for them.
8. The Applicants queried whether work of gritting had been done and how the Respondent was able to obtain access to the property to carry out surveys when he knew nothing about them.

### **Reasons for the decisions of the tribunal**

#### **Insurance:**

9. The Tribunal accepts the evidence on this issue that the insurance is reasonably placed as part of the landlord's larger portfolio through the broker Christopher Trigg Limited.

#### **Managing Agents Fees**

10. The Tribunal determines that the current annual fee of £150 per flat is within the range of reasonable charges. Were the property not part of a larger portfolio managed by the same managing agents for the Respondent, the Tribunal would expect the managing agents' fees to be significantly higher in order to attract any interest. The Tribunal finds that the managing agent does carry out a number of tasks in connection with the management of the building and the provision of services as provided for in the lease. The Tribunal is satisfied that there is express reference to the collection of management fees in clause 3 of the Fifth Schedule of the lease and that the fees charged from 2007 onwards are reasonable and payable.

#### **Sinking fund**

11. The lease makes provision for the collection of a reserve (sinking) fund at clause 1(i) of the Seventh Schedule. The Tribunal determines that reasonable demands can be made in respect of this head of service charge but notes that at the request of the tenants, exterior works of

re-decoration were not carried out despite the documented intention of the Respondent to do so.

### **Asbestos/Risk Assessment/Maintenance Inspection/Reinstatement Cost Assessment reports**

12. The Tribunal notes that the tenants have been unaware of how access has been gained to carry out these surveys and prepare the reports. However, none of the tenants live at the property and visit it only intermittently. The Tribunal accepts the evidence of the Respondent that these reports have been reasonably obtained and paid for. Consequently, the Tribunal finds these charges are reasonable and payable.

### **Repairs and maintenance**

13. The Tribunal accepts that repairs and maintenance have been carried out to the subject premises as claimed by the landlord. Specifically, the Tribunal finds that there has been a gate in situ, which was redecorated and notes its presence from the photographs provided. The Tribunal prefers the Respondent's evidence on this issue and finds it unlikely that a gate would be charged for that did not exist and that its presence can be verified from photographs. Similarly, the Tribunal finds that it is more likely than not that the fire extinguishers were provided at the premises by the Respondent in 2011. Had the tenant's own managing agent placed the fire extinguishers? in the premises the Tribunal would reasonably expect to see the production of an invoice to that effect.

### **Administration fees**

14. The Applicants withdrew their objection to this item on explanation that they were associated with the service of section 20 consultation notices in 2007 and 2011 for major works, which were not carried out at the request of the tenants.

### **Section 20C**

15. The Tribunal finds no provision in the lease, which allows the Respondent to charge for legal costs to be added to the service charges. Therefore, the parties must bear their own costs of this application to the Tribunal.

Signed: Judge Tagliavini

Dated: 22 July 2014

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

### **Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

#### **Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

### **Commonhold and Leasehold Reform Act 2002**

#### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,



- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

#### **Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

#### **Schedule 11, paragraph 5**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,

- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

**Schedule 12, paragraph 10**

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
  - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
  - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.